

Attorney Docket No. 298.41

PATENT

1/Fn

3765

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of ) Group Art Unit: 3765  
JOSEPH PATERNOSTER )  
Application No.: 10/511,421 ) Examiner: Not yet assigned  
Filing Date: 10/14/2004 )  
For: USE OF THERMOREGULATORY )  
MATERIAL TO IMPROVE )  
EXERCISE PERFORMANCE )

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Mail Stop Amendment  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Dear Sir:

Applicant submits herewith patents, publications and/or other information (attached hereto and listed on the attached Form PTO-1449) of which he is aware pursuant to his duty of disclosure in accordance with 37 CFR § 1.56.

This Information Disclosure Statement:

- (a)  accompanies the new patent application submitted herewith.
- (b)  is filed within three months after the filing date of the application or within three months after the date of entry of the national stage of a PCT application as set forth in 37 CFR § 1.491. 37 CFR § 1.97(b)(1) and (2).
- (c)  as far as is known to the undersigned, is filed before the mailing date of a first Office Action on the merits. 37 CFR § 1.97(b)(3).
- (d)  as far as is known to the undersigned, is filed before the mailing of a first Office Action after the filing of a Request for Continued Examination under 37 CFR § 1.114. 37 CFR § 1.97(b)(4).
- (e)  is filed after the first Office Action and more than three months after the application's filing date or PCT national stage date of entry filing but, as far as is known to the undersigned, prior to the mailing date of any Final Rejection, a

Notice of Allowance, or an action that otherwise closes prosecution in the application, whichever occurs first, and is accompanied by either the fee set forth

in 37 C.F.R. § 1.17(p) or a certification as specified in 37 C.F.R. § 1.97(e), as checked below. 37 C.F.R. § 1.97(c).

(f) [ ] is filed after the mailing date of any of a final rejection, a notice of allowance, or an action that otherwise closes prosecution in the application, whichever occurs first, and is accompanied by the fee set forth in 37 C.F.R. § 1.17(i)(1) and a certification as specified in 37 C.F.R. § 1.97(e), as checked below. 37 C.F.R. § 1.97(d). This document is to be considered as a petition requesting consideration of the information disclosure statement.

[If either of boxes (e) or (f) are checked above, the following "certification" under 37 C.F.R. § 1.97(e) may need to be completed.] The undersigned certifies that:

[ ] Each item of information contained in the information disclosure statement was cited in a communication mailed from a foreign patent office in a counterpart foreign application not more than three months prior to the filing of this information disclosure statement.

[ ] No item of information contained in this information disclosure statement was cited in a communication mailed from a foreign patent office in a counterpart foreign application or, to the knowledge of the undersigned after making reasonable inquiry, was known to any individual designated in 37 C.F.R. § 1.56(c) more than three months prior to the filing of this information disclosure statement.

A list of the patent(s) or publication(s) is set forth on the attached Form PTO-1449

(Modified). A copy of the items on PTO-1449 is supplied herewith:

[ ] each [ ] none [ X ] only the International Search Report

A concise explanation of relevance of the items listed on PTO-1449 is

[X] not given

[ ] given for each listed item

[ ] given for only non-English language listed item(s) [Required]

[ ] is in the form of an English language copy of a Search Report from a foreign patent office, issued in a counterpart application, which refers to the relevant portions of the references.

The Examiner is reminded that a "concise explanation of the relevance" of the submitted prior art "may be nothing more than identification of the particular figure or paragraph of the patent or publication which has some relation to the claimed invention," MPEP § 609.

Pursuant to 37 C.F.R. § 1.97(g), the filing of this Information Disclosure Statement shall not be construed as a representation that a search has been made. Furthermore, pursuant to 37 C.F.R. § 1.97(h), the filing of this Information Disclosure Statement shall not be construed to be an admission that the information cited in this statement is, or is considered to be, material to patentability, as defined in 1.56(b). The filing of this Information Disclosure Statement is not intended to constitute an admission that any patent, publication or other information referred to therein is "prior art" for this invention unless specifically designated as such.

It is submitted that the Information Disclosure Statement is in compliance with 37 C.F.R. § 1.98 and MPEP § 609 and the Examiner is respectfully requested to consider the listed references.

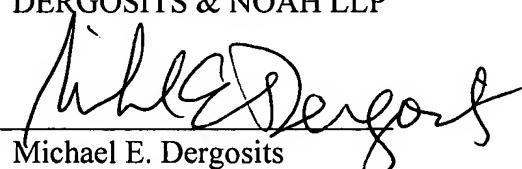
**The Commissioner is hereby authorized to charge any underpayment of fees associated with this communication or credit any overpayment to Deposit Account No.04-0822.**

Dated: January 4, 2007

Respectfully submitted,

DERGOSITS & NOAH LLP

By:

  
Michael E. Dergosits  
Reg No. 31,243

Four Embarcadero Center  
Suite 1450  
San Francisco, California 94111  
(415) 705-6377 Telephone  
(415) 705-6383 Facsimile



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## **INFORMATION DISCLOSURE STATEMENT BY APPLICANT**

*(Use as many sheets as necessary)*

Sheet 1 of 2

**Complete if Known**

|                        |                    |
|------------------------|--------------------|
| Application Number     | 10/511,421         |
| Filing Date            | 10-14-2004         |
| First Named Inventor   | Joseph Paternoster |
| Art Unit               | 3739               |
| Examiner Name          | ROANE, AARON F     |
| Attorney Docket Number | 298.41             |

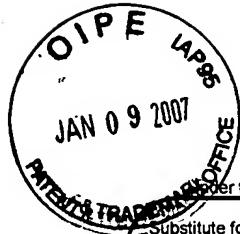
## U. S. PATENT DOCUMENTS

## FOREIGN PATENT DOCUMENTS

| Examiner<br>Signature   |  | Date<br>Considered |  |
|---|--|--------------------|--|
| <p>*EXAMINER: Initial if reference considered, whether or not citation is in conformance with MPEP 609. Draw line through citation if not in conformance and not considered. Include copy of this form with next communication to applicant. <sup>1</sup>Applicant's unique citation designation number (optional). <sup>2</sup>See Kinds Codes of USPTO Patent Documents at <a href="http://www.uspto.gov">www.uspto.gov</a> or MPEP 901.04. <sup>3</sup>Enter Office that issued the document, by the two-letter code (WIPO Standard ST.3). <sup>4</sup>For Japanese patent documents, the indication of the year of the reign of the Emperor must precede the serial number of the patent document. <sup>5</sup>Kind of document by the appropriate symbols as indicated on the document under WIPO Standard ST.16 if possible. <sup>6</sup>Applicant is to place a check mark here if English language Translation is attached.</p> |  |                    |  |

Translation is attached.  
This collection of information is required by 37 CFR 1.97 and 1.98. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.14. This collection is estimated to take 2 hours to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

If you need assistance in completing the form, call 1-800-PTO-9199 (1-800-786-9199) and select option 2.



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Substitute for form 1449/PTO

**Complete if Known**

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|--|---|------------------------|--------------------|
| <b>INFORMATION DISCLOSURE<br/>STATEMENT BY APPLICANT</b><br><br><i>(Use as many sheets as necessary)</i> |   | Application Number     | 10/511,421         |
|  |   | Filing Date            | 10-14-2004         |
|  |   | First Named Inventor   | Joseph Paternoster |
|  |   | Art Unit               | 3739               |
|  |   | Examiner Name          | ROANE, AARON F     |
| Sheet  | 2 | of                     | 2                  |
|  |   | Attorney Docket Number | 298.41             |

**NON PATENT LITERATURE DOCUMENTS**

| Examiner Initials* | Cite No. <sup>1</sup> | Include name of the author (in CAPITAL LETTERS), title of the article (when appropriate), title of the item (book, magazine, journal, serial, symposium, catalog, etc.), date, page(s), volume-issue number(s), publisher, city and/or country where published. | T <sup>2</sup>                      |
|--------------------|-----------------------|---|-------------------------------------|
|                    | 1                     | LINDA DVORAK, Notification of Transmittal of the International Search Report and International Search Report, dated Nov. 30, 2006   | <input checked="" type="checkbox"/> |
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|--------------------|-----------------|
| Examiner Signature | Date Considered |
|--------------------|-----------------|

\*EXAMINER: Initial if reference considered, whether or not citation is in conformance with MPEP 609. Draw line through citation if not in conformance and not considered. Include copy of this form with next communication to applicant.

1 Applicant's unique citation designation number (optional). 2 Applicant is to place a check mark here if English language Translation is attached.  
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